

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

INTERIM APPLICATION NO. 7350 OF 2024 (Sr.no.906)
IN
APPEAL FROM ORDER (LODG.) NO. 29003 OF 2023

Mrs. Anita Bhadresh Bhatta V/S. Municipal Corporation of Greater Mumbai and anr.	} }	..Applicant ..Respondents
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WITH
INTERIM APPLICATION NO. 7351 OF 2024 (Sr.no.907)
IN
APPEAL FROM ORDER NO. 727 OF 2022

Mrs. Shobha Umesh Shetty V/S. Municipal Corporation of Greater Mumbai and anr.	} }	..Applicant ..Respondents
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WITH
INTERIM APPLICATION NO. 7352 OF 2024 (Sr.no.908)
IN
APPEAL FROM ORDER NO. 728 OF 2022

Mr. Karman Ratanshee Nishar, thr. COA, Mr. Champshi Bharmal Nishar V/S. Municipal Corporation of Greater Mumbai and anr.	} }	..Applicant ..Respondents
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WITH
INTERIM APPLICATION NO. 7353 OF 2024 (Sr.no.909)
IN
APPEAL FROM ORDER NO. 469 OF 2022

Mr. Vasant Nanji Dedhia, Prop. M/s.
National Chemist } ..Applicant
V/S.
Municipal Corporation of Greater
Mumbai and anr. } ..Respondents

**WITH
INTERIM APPLICATION NO. 7354 OF 2024 (Sr.no.910)
IN
APPEAL FROM ORDER NO. 88 OF 2023**

Mrs. Janakben Ramniklal Joshi } ..Applicant
V/S.
Municipal Corporation of Greater
Mumbai and anr. } ..Respondents

**WITH
INTERIM APPLICATION NO. 7355 OF 2024 (Sr.no.911)
IN
APPEAL FROM ORDER NO. 733 OF 2022**

Mr. Rahul Nanji Dedhia, Prop. Of M/s.
National General Store } ..Applicant
V/S.
Municipal Corporation of Greater
Mumbai and anr. } ..Respondents

Mr. Ranjit Shripat Rao, *for the Applicants.*

Ms. Smita Tondwalkar, *for Respondent No.1-BMC.*

Mr. Vikramsingh Garewal *a/w. Mr. Harshil Parekh i/by.
Purnanand & Co. for Respondent No.2 in Ias-7350, 7351, 7352, 7353 of
2024.*

CORAM : SANDEEP V. MARNE, J.

Dated : 2 APRIL 2024.

P.C. :

1) This is a second attempt on the part of the Applicants to seek modification of the Order passed by this Court on 6 October 2023 by changing their Advocates. Initially when the Appeals from Order were argued, the Appellants had engaged, Mr. Kanetkar the learned advocate who took instructions from the Appellants and on the basis of joint request made by the learned counsel appearing for the parties, the Appeals were disposed of by passing following order on 6 October 2023 :

. After arguing the Appeals for some time, the learned counsel appearing for the Appellants and the learned counsel appearing for Respondent No.2 make a joint request that the present Appeals be disposed of without recording reason by making following arrangements:

i) The Appellants and Respondent No.2 shall execute agreement on same terms as is executed with other tenants in respect of commercial structures for grant of permanent alternate accommodation within a period of two weeks from today.

ii) The Appellant shall vacate the structures in their possession within a period of six weeks from the date of execution of the agreements for permanent alternate accommodation.

iii) Respondent No.2 shall pay transit rent to the Appellants as is being paid the other occupants of commercial structures from the date of vacation of the structures by them.

iv) In the event any of the Appellants failing to cooperate with execution of the PAAA or to vacate the suit structures within the time indicated above, it shall be open for the Municipal Corporation to demolish their respective suit structures without issuing any further notices.

2. The statements made by the respective parties are accepted as undertakings given to this Court.

3. With the above directions, all the Appeals are disposed of.

4. In view of disposal of Appeals, all Interim Applications stand disposed of.

2) After the Order dated 6 October 2023, it appears that Appeal from Order (St.) No. 29003/2023 was subsequently moved before this Court on 7 November 2023 when following order was passed by this Court :

2. This Appeal is filed challenging the order dated 12 April 2022 passed by the City Civil Court rejecting the draft Notice of Motion filed for seeking temporary injunction in respect of the notice dated 4 November 2019 issued by the Municipal Corporation for Greater Mumbai under the provisions of Section 354 of the Mumbai Municipal Corporation Act, 1888. The learned counsel appearing for the Appellant would invite my attention to the order passed by this Court on 6 October 2023 in Appeal from Order No. 727/2022 and other connected Appeals. She would submit that the present Appeal can be disposed of by passing the same order. The learned counsel appearing for Respondent No.2 agrees to the suggestion. Accordingly, the Appeal is disposed of by passing the following order :

(i) The Appellant and Respondent No.2 shall execute Permanent Alternate Accommodation Agreement (PAAA) on the same terms as executed with the other tenants in respect of

residential/commercial structures within a period of two weeks from today.

(ii) The Appellants shall vacate the structures in their occupation on/or before 2 December 2023.

(iii) The Respondent No.2 shall pay transit rent to the Appellants as is being paid to the other occupants of residential/commercial structures from the date of vacation of structures by them.

(iv) In the event of failure of the Appellants to cooperate with Respondent No.2 for execution of PAAA or to vacate the suit structures within the time indicated above, it shall be open for the Municipal Corporation to demolish the structures in possession of the Appellants without issuing any further notices.

3. In view of the above directions, the learned counsel appearing for the Appellants would fairly submit that the suit before the City Civil Court shall be withdrawn. The statement is accepted.

4. With the aforesaid directions, the Appeal is disposed of. All Interim Applications pending therein also stand disposed of.

3) In the orders passed by this Court on 6 October 2023 and 7 November 2023, the Appellants had agreed to vacate the structures in their possession within the time stipulate in those orders. Contrary to the undertaking given to this Court, Appellants failed to vacate the premises in their occupation. Instead they were advised to file various Interim Applications seeking clarification of the Order dated 6 October 2023. While filing of those applications, the Appellants engaged the services of another advocate, Mr. Uday Bobde to seek clarification of Order dated 6 October 2023. While arguing those Interim Applications,

it was strenuously submitted before this Court that Appellants agreed for consent order on account of representation made to them vide e-mail dated 21 December 2022 about allotment of alternate accommodation at a particular location. After hearing those Interim Applications at length, this Court dismissed the same by passing the following order on 12 March 2024 :

1. These Interim Applications are filed seeking clarification of Order dated 6th October, 2023 passed by this Court by which Appeals were disposed of in view of the agreement expressed between the Appellant and Respondent No.2 therein. Under Clause (i) of the Order, the Appellants and Respondent No.2 agreed to execute PAAA on same terms as executed with other tenants in respect of commercial structures for grant of permanent alternate accommodations within a period of two weeks from the date of passing of the order.

2. Mr. Bobde, the learned counsel for the Applicants would complain that the said agreement was on the basis of an understanding that had taken place between the parties vide email dated 22 nd December, 2022, by which, the Respondent No.2 has agreed to accommodate these tenants in the commercial shops in the new building to be constructed at the same place where the current building Gopal Bhavan stands. However, when the Appellants received drafts of PAAA from Respondent No.2-Developer, they realized that Respondent No.2 has undertaken composite scheme for redevelopment of building Gopal Bhavan along with implementation of Slum Rehabilitation Scheme of the neighboring plot. He further submits that by way of draft PAAA, Respondent No.2 has now intended to accommodate the six tenants in respect of commercial shops in the building Crystal Midtown, which is being constructed at the rear portion of the lay out behind the land on which the building Gopal Bhavan is currently standing. According to Mr. Bobde, the Applicants are currently occupying their commercial premises on the main LBS Road and on account of PAAA, the Applicants would loose the

advantage of road frontage. He would submit that the agreement expressed before this Court on 6th October, 2023 was premised on an understanding that the Applicants would be accommodated on the road frontage building.

3. Mr. Khandeparkar, learned Counsel for Respondent No.2, on the other hand would deny any such understanding between the parties at the time of expression of agreement during the course of hearing on 6th October, 2023. He would submit that the Applicants were always aware about execution of a composite Scheme under DCR 33 (10) and DCR 33(14.D) He would submit that the Respondent No.2 -Developer has ensured that none of the Appellants would be accommodated in Rehab building constructed for slum dwellers. He would submit that the building Crystal Midtown, is also on a road which is an internal layout road. He would submit that Applicants otherwise, do not have any right to seek alternate accommodation on the same plot where their tenanted structures are currently located. He would submit that the Applicants are violating the Order dated 6th October, 2023.

4. Perusal of the Order dated 6th October, 2023 would indicate that parties did not agree upon a specific location where permanent alternate accommodations are to be granted to the Applicants. The Appeals arose out of rejection of application for temporary injunction filed by the Appellants in the suits challenging notices under Section 354 of the Mumbai Municipal Corporation Act, 1888. The remit of inquiry qua the notice under Section 354 is extremely narrow. The only right that a tenant is guaranteed under Sub-section 5 of Section 354 is re-induction as a tenant in the newly constructed building in respect of the same area which is occupied by him. This right of the Applicants is being protected. Additionally, instead of being re-inducted as mere tenants, they would be made owners in respect of alternate accommodations. Applicants did not make any grievance at the time of decision of the Appeals about the location at which alternate accommodations were offered to them by Respondent No.2 Developer. Therefore, by interim applications, the scope of appeals cannot now be enlarged, that too after disposal of the

appeals in view of the agreement that prevailed between the parties on 6th October, 2023.

5. This Court would not be in a position to decide the controversy about the location at which the Appellants can be granted permanent alternate accommodations in Interim Applications filed seeking clarification of the Order dated 6th October, 2023.

6. Interim Applications are accordingly dismissed.

7. After the order is pronounced, Mr. Bobde, learned counsel for the Applicants after taking instructions from his clients, who are present in the Court, would submit that each of the Applicants shall execute PAAA with the Developer within one week from today.

8. Respondent No.2 shall provide draft of PAAA to each of the Applicants by today evening. On or before 19th March, 2024, each of the 15 applicants shall execute and register the PAAA. Only those Applicants, who execute PAAA with the Respondent No.2-Developer, shall have time till 2nd April, 2024 to vacate the tenanted structure.

9. It is clarified that, if any of the Applicants fail to execute PAAA with Respondent No.2 Developer by 19th March, 2024, the Municipal Corporation shall forthwith proceed to vacate such occupant from his/her respective tenanted structure.

4) Now fresh set of applications are filed by engaging third Advocate by the Appellants to seek review of the Order dated 12 March 2024. The learned advocate appearing for the Appellants has repeated the very same grievance about representation made by the Developer by e-mail dated 21 December 2022 for allotment of alternate accommodation at a particular location. This submission was raised on behalf of the Appellants on 12 March 2024 and the same is again sought

to be raised in the present applications. Applicants cannot be permitted to raise same contention repeatedly.

5) Additionally, a new grievance is sought to be raised that the Appellants are being provided lesser area in the form of alternate accommodations than the one which is currently occupied by them in the old building. In this regard, case of Mr. Vedprakash Ramdayal Jaguri is sought to be highlighted. However, when the Appeals were argued or when previous set of Interim Applications were argued on 12 March 2024, this grievance was never raised. No particulars of certification of lesser area in respect Mr. Vedprakash Ramdayal Jaguri are pleaded even in the present applications.

6) No error apparent on the face of record can be traced in the Order dated 12 March 2024. No ground for review of that order is thus made out.

7) In my view, the present applications are nothing but gross abuse of process of law and wastage of judicial time of the Court. Repeated attempts are being made by the Appellants through different Advocates to seek modifications of the Orders passed by this Court. On 12 March 2024, this Court was required to devote substantial amount of time to consider the grievance that was sought to be raised on behalf of the Appellants. After detailed hearing of the applications, this Court held that it is not possible for it to decide the controversy about location at which the Appellants can be granted alternate

accommodations. Today again, the very same issue is sought to be re-agitated before me in applications filed through another advocate. In my view, such attempts on the part of the Appellants cannot be without any consequences. Applicants have repeatedly violated solemn statements made before this Court for vacation of their premises and for execution of PAAA. Rather than honouring their statements and undertakings, they are repeatedly filing baseless applications by changing their advocates. Though the learned counsel appearing for the Appellants has repeatedly urged before me that the Appellants belong to middle class families and be spared from costs to be imposed by this Court, in my view, the repeated attempts made by the Appellants through different Advocates by abusing the process of law cannot go without any consequences. Though this Court would be justified in imposing exemplary costs on Applicants, token costs of Rs.10,000/- are imposed in each Applications.

8) The Interim Applications are accordingly **dismissed** by imposition of costs of Rs.10,000/- in each of the Applications. Costs in each of the Applications shall be deposited by the Appellants with the High Court Legal Services Authority within a period of four weeks from today.

[SANDEEP V. MARNE, J.]

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